IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4290 OF 2006

Shri Madhukar Shankar Takale
and ors. ..Applicants

Vs.

The State of Maharashtra and anr. ..Respondents

Mr. M.S. Mohite for applicants.
Mr. A.S. Shitole, APP for State.
Mr. A.V. Anturkar for respondent no.2.

CORAM: B.H. MARLAPALLE, J.

Date : August 27, 2007.

P.C.:

1. Heard Mr. Mohite the learned counsel for the applicants. Mr. Anturkar the learned counsel appears for the respondent no.2 and Mr. Shitole the learned APP appears for the State.

2. The applicants are some of the accused in Regular Criminal Case No. 16 of 2005 filed by the respondent no.2 for the offences punishable under Sections 193, 196, 423, 465, 406, 471 and 420 all read with Section 34 of IPC. The learned JMFC at Mhaswad in District Satara issued the order of process on

7/4/2005 and the same was challenged in Criminal Revision Application No. 71 of 2005. The Revision Application has been partly allowed by the learned Sessions Judge at Satara vide his order dated 25/9/2006 by confirming the process issued under the offences punishable under Sections 193, 196, 423, 465, 406 and 471 all read with Section 34 of IPC. Hence, this petition.

3. Mr. Mohite the learned counsel for the applicants raised the issue of limitation in respect of some accused and by relying upon the Constitution Bench decision in the case of Iqbal Singh Marwah and anr. vs. Meenakshi Marwah and anr. [(2005) 4 SCC 370], he submitted that the same was not applicable in the instant case and the learned Sessions Judge fell in error in relying on the said decision and confirming the process issued for certain offences, as noted hereinabove.

4. It has been pointed out by Mr. Anturkar that though the suit was decided on 26/11/1990, Regular Civil Appeal No. 120 of 1991 came to be decided on

6/2/1999 and thereafter Second Appeal No. 831 of 2002 came to be dismissed by this court on 5/12/2002 and, therefore, the complaint was within limitation.

5. Be that as it may, the fact remains that the issue of limitation, if framed before the trial court by the accused, will have to be decided as the preliminary issue by recording evidence and along with all other issues. So far as the second contention is concerned, the same also requires to be taken into consideration by the trial court on the basis of the evidence that the parties may adduce before it and it cannot be accepted, as of now, that the Constitution Bench decision in Iqbal Marwah's case was wrongly relied upon by the Sessions Court.

6. Hence the petition is rejected as there is no case made out to cause interference under Article 227 of the Constitution and it would unsafe to invoke the powers under Section 482 of Cr.P.C. However, trial is expedited and the trial court shall decide all the issues, including the issue of limitation on the basis of the evidence adduce by the parties without being

influenced by the observations made in the revision court’s order.

(B.H. Marlapalle,J.)